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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,985	03/17/2004	David E. Halasz	72255/00021	3916
23380	7590	10/31/2006	EXAMINER	
TUCKER, ELLIS & WEST LLP 1150 HUNTINGTON BUILDING 925 EUCLID AVENUE CLEVELAND, OH 44115-1414			HU, JINSONG	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/802,985	HALASZ, DAVID E.	
	Examiner	Art Unit	
	Jinsong Hu	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 August 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 19,21-29,36-43 and 49-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 19,21-29,36-43 and 49-54 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

Detailed Action

1. Claims 19, 21-29, 36-43 and 49-54 are presented for examination. Claims 49-54 are newly added claims. Claims 19, 21, 28, 36 and 42 have been amended. Claims 1-18, 20, 30-35 and 44-48 are canceled.

2. Claims 49-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 49, the use of the word "characterized" is inappropriate since 35 US 112, second paragraph, requires the claim to particularly point out and distinctly claim the invention, not merely its characteristics. Furthermore, if this word is eliminated, then the remaining format of the claim should be modified in order to reflect this correction.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 19, 21-27, 36-41 and 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaszewski et al. (US 6,208,629 B1) in view of Fukuda (US 5,995,844).

5. As per claim 19, Jaszewski teaches a method for a wireless base unit to select an operating frequency, comprising:

detecting for each of a plurality of frequencies whether another base unit is using each of the plurality of frequencies within range of the wireless base unit [col. 2, lines 51-58; col. 4, lines 8-17; col. 6, lines 26-41]; and

selecting the operating frequency based on whether another base unit is detected using the selected frequency, wherein the selected operating frequency is a least used non-overlapping frequencies of plurality of frequencies [col. 2, lines 64-67; col. 4, lines 33-36 & 41-45; col. 11, lines 23-27].

Jaszewski does not specifically teach that the wireless base unit performing the selecting steps. However, Fukuda on the other hand teaches the wireless base unit performing the selecting steps [col. 2, lines 16-28]. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the selecting steps in base unit in Jaszewski's system because doing so would make the frequency selection step less complicated.

6. As per claim 21, Jaszewski teaches the step of sending a request signal requesting base units receiving the signal respond to the request signal: wherein the

detecting step further comprises waiting for a response to the request signal [col. 5, lines 33-54].

7. As per claim 22, Jaszewski teaches the request signal is sent on each of the plurality of frequencies [col. 5, lines 33-54].

8. As per claim 23, Jaszewski and Fukuda teach the invention substantially as claimed in claim 11. Both references do not specifically teach waiting a predetermined time period for the response to the request signal. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the predetermined time in the combination system of Jaszewski/Fukuda because it is a well-known feature in the art for waiting a response from the other device.

9. As per claim 24, Jaszewski teaches the invention substantially as claimed in claim 11. Both references do not specifically teach waiting at least 10 milliseconds for the response to the request signal. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the predetermined time in the combination system of Jaszewski/Fukuda because it is a well-known feature in the art for waiting a response from the other device.

10. As per claim 25, Jaszewski teaches the request signal is one of a probe request packet, a find router packet and a router identification packet [col. 6, lines 21-29].

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11. As per claim 26, Jaszewski teaches the invention substantially as claimed in claim 11. Both references do not specifically teach the step of sending the request signal at least three times. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include repeated sending step because doing so would avoid some devices do not response to the signal caused by not receiving the request signal and enable the system collect more accurate information from the devices.

12. As per claim 27, Jaszewski teaches the step of measuring the signal strength of the response to the request signal [col. 8, lines 28-40].

13. As per claims 36-41, since they are apparatus claims of claims 19-26, they are rejected for the same basis as claims 19-26 above.

14. As per claims 49-53, since they are system claims of claims 19-26, they are rejected for the same basis as claims 19-26 above.

15. Claims 28-29 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharma et al. (US 6,069,871) in view of Fukuda (US 5,995,844).

16. As per claim 28, Sharma teaches the invention as claimed including a method for a wireless base unit to select an operating frequency, comprising:

detecting other base stations operating on each of a plurality of frequencies within range of the wireless base unit [col. 7, lines 9-12; col. 12, lines 49-55]; obtaining information concerning the load on the other base stations within range of the wireless base unit [col. 7, lines 12-16 & 42-46; col. 12, lines 55-60]; and selecting the operating frequency based on the load on the other base stations within range of the wireless base unit [col. 7, lines 16-20 & 46-48; col. 9, lines 11-29; col. 12, lines 60-63; i.e., selects one of the base station means selecting one operating frequency since one base station operated on one carrier frequency].

Sharma does not specifically teach that the wireless base unit performing the selecting steps. However, Fukuda on the other hand teaches the wireless base unit performing the selecting steps [col. 2, lines 16-28]. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the selecting steps in base unit in Sharma's system because doing so would make the frequency selection step less complicated.

17. As per claim 29, Sharma teaches the step of sending a request signal requesting base units receiving the signal respond to the request signal; wherein the obtaining step further comprises receiving load data from a data field in the response to the request signal from other base stations [col. 7, lines 8-26 & 36-53; col. 12, lines 49-66].

18. As per claims 42 and 43, since they are apparatus claims of claims 28 and 29, they are rejected for the same basis as claims 28 and 29 above.

Allowable Subject Matter

19. Claim 54 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

20. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jinsong Hu

October 27, 2006


VIET D. VU
PRIMARY EXAMINER